

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 445

3 **48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

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10 AN ACT

11 RELATING TO LICENSURE; ENACTING THE MORTGAGE LOAN ORIGINATOR  
12 LICENSING ACT; CREATING LICENSING REQUIREMENTS FOR MORTGAGE  
13 LOAN ORIGINATORS; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
17 through 16 of this act may be cited as the "Mortgage Loan  
18 Originator Licensing Act".

19 Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
20 Mortgage Loan Originator Licensing Act:

- 21 A. "applicant" means any person seeking to be  
22 licensed as a mortgage loan originator;  
23 B. "director" means the director of the division;  
24 C. "division" means the financial institutions  
25 division of the regulation and licensing department;

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1           D. "license" means a license issued by the director  
2 pursuant to the Mortgage Loan Originator Licensing Act;

3           E. "licensee" means a person who obtains a license  
4 issued by the director pursuant to the Mortgage Loan Originator  
5 Licensing Act;

6           F. "mortgage loan" means a loan or agreement to  
7 extend credit made to a natural person that is secured by a  
8 mortgage, deed of trust, contract for deed or other similar  
9 instrument or document representing a security interest or lien  
10 upon any lot intended for residential purposes or a one-to-four  
11 family dwelling, located in this state, including the renewal  
12 or refinancing of any such loan;

13           G. "mortgage loan origination" means engaging in,  
14 or holding out to the public as being willing to engage in, for  
15 compensation or in the expectation of compensation, directly or  
16 indirectly, all of the following activities:

17                   (1) soliciting, accepting or offering to  
18 accept an application for a mortgage loan;

19                   (2) reviewing a borrower's application for a  
20 mortgage loan or assisting a borrower or offering to assist a  
21 borrower in the preparation of an application for a mortgage  
22 loan;

23                   (3) negotiating or offering to negotiate with  
24 or on behalf of a borrower the terms or conditions of a  
25 mortgage loan;

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1 (4) quoting mortgage loan payments, rates or  
2 terms; and

3 (5) counseling a borrower or offering to  
4 counsel a borrower on the availability of, qualifications for  
5 and features and benefits of a mortgage loan;

6 H. "mortgage loan originator" means a natural  
7 person who engages in mortgage loan origination activities;

8 I. "primary market" means the market wherein  
9 mortgage loans are originated between a lender and a borrower,  
10 whether or not through a mortgage broker or other means; and

11 J. "registrant" means a person who is registered as  
12 a mortgage loan company or loan broker pursuant to the Mortgage  
13 Loan Company and Loan Broker Act.

14 Section 3. [NEW MATERIAL] LICENSE EXEMPTIONS.--The  
15 following are exempt from the licensing requirements of the  
16 Mortgage Loan Originator Licensing Act:

17 A. a person employed by a bank, savings bank,  
18 savings and loan association or credit union that is authorized  
19 to make loans and to receive deposits and that is chartered  
20 under the laws of the United States, the state of New Mexico or  
21 any other state or by a subsidiary of any such bank, savings  
22 bank, savings and loan association or credit union; and

23 B. the United States, the state of New Mexico, any  
24 other state of the United States or an agency or  
25 instrumentality of any such state government.

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1           Section 4. [NEW MATERIAL] LICENSE REQUIRED TO ORIGINATE  
2 MORTGAGE LOANS.--

3           A. Mortgage loan origination shall only be  
4 conducted by a licensee.

5           B. A licensee shall only engage in mortgage loan  
6 origination on behalf of one registrant.

7           C. A person found to be in violation of the  
8 Mortgage Loan Originator Licensing Act shall be subject to a  
9 fine not to exceed five thousand dollars (\$5,000) or revocation  
10 of that person's license for a period of not less than three  
11 years, or both.

12           Section 5. [NEW MATERIAL] APPLICATION FOR LICENSE.--

13           A. An applicant shall submit to the director an  
14 application and required fees for licensing on forms prescribed  
15 and provided by the director. The application shall contain  
16 information that the director deems necessary to identify  
17 adequately the location where the person engages in mortgage  
18 loan origination activities, the registrants for whom the  
19 licensee will originate mortgage loans and other information  
20 that the director requires to evaluate the condition,  
21 character, qualifications and fitness of the applicant and the  
22 applicant's compliance with the provisions of the Mortgage Loan  
23 Originator Licensing Act. Each application shall be  
24 accompanied by a nonrefundable fee pursuant to the Mortgage  
25 Loan Originator Licensing Act.

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1           B. An application shall be approved and a license  
2 shall be issued to the applicant if the director:

3                   (1) has received the complete application and  
4 fee required by this subsection; and

5                   (2) determines that the character,  
6 qualifications and fitness of the applicant warrant a belief  
7 that the business of the applicant will be conducted  
8 competently, honestly, fairly and in accordance with all  
9 applicable state and federal laws.

10           C. An applicant shall complete satisfactorily a  
11 course of mortgage lending study approved by the director and  
12 shall pass a written examination approved by the director to  
13 ensure the applicant has sufficient knowledge to conduct  
14 mortgage business in compliance with state and federal law.

15           D. An applicant shall satisfy a background check  
16 authorized and approved by the director.

17           Section 6. [NEW MATERIAL] RENEWAL OF LICENSE.--

18                   A. A license shall become effective as of the date  
19 specified on the face of the license.

20                   B. A license shall be renewed every two years by  
21 filing with the director, at least thirty days prior to the  
22 expiration of the license, a renewal application containing  
23 information that the director requires to determine the  
24 existence of material changes from the information contained in  
25 the applicant's original license application or prior renewal

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1 applications. An applicant for renewal shall submit every two  
2 years evidence of satisfactory completion of a minimum of  
3 twelve hours of continuing professional education approved by  
4 the director.

5 C. Each renewal application shall be accompanied by  
6 a nonrefundable fee pursuant to Section 14 of the Mortgage Loan  
7 Originator Licensing Act.

8 Section 7. [NEW MATERIAL] APPLICATION DENIAL--APPEAL.--If  
9 the director denies an initial license application or a license  
10 renewal application, the applicant may make a written request  
11 for a hearing. The director shall conduct a hearing to  
12 determine if the denial was warranted.

13 Section 8. [NEW MATERIAL] DENIAL, SUSPENSION, REVOCATION  
14 AND NONRENEWAL OF LICENSE--NOTICE.--The director may deny,  
15 suspend, revoke or refuse to renew a license issued pursuant to  
16 the Mortgage Loan Originator Licensing Act if the director  
17 finds, after notice and opportunity for a hearing, that:

18 A. the applicant or licensee has violated a section  
19 of the Mortgage Loan Originator Licensing Act or a rule  
20 promulgated pursuant to that act;

21 B. facts or conditions exist that would have  
22 justified the denial of the license or renewal application had  
23 those facts or conditions existed or been known to exist at the  
24 time the application for an initial license or license renewal  
25 was made;

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1 C. the applicant or licensee has filed with the  
2 division a document or statement containing a false  
3 representation of a material fact or fails to state a material  
4 fact;

5 D. the applicant or licensee, or an employee of the  
6 applicant or licensee, has been convicted of a crime involving  
7 fraud, dishonesty or deceit;

8 E. the applicant or licensee, or an employee of the  
9 applicant or licensee, has engaged in or is engaging in  
10 deceptive business practices;

11 F. the applicant or licensee, or an employee of the  
12 applicant or licensee, has been the subject of a disciplinary  
13 action by the division or any other state or federal regulatory  
14 agency;

15 G. a final judgment has been entered against the  
16 applicant or licensee, or an employee of the applicant or  
17 licensee, in a civil action and the director finds, based upon  
18 the conduct on which the judgment is based, that the licensing  
19 of that applicant or licensee would be contrary to the public  
20 interest;

21 H. the applicant or licensee, or an employee of the  
22 applicant or licensee, has been convicted of engaging in  
23 mortgage business activity without authorization pursuant to  
24 the Mortgage Loan Originator Licensing Act or a substantially  
25 similar offense in another state; or

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1 I. the applicant or licensee has refused to furnish  
2 information required by the director within a reasonable period  
3 of time as established by the director.

4 Section 9. [NEW MATERIAL] LICENSE DISPLAY.--A licensee  
5 shall prominently display the licensee's original license in a  
6 way that reasonably ensures recognition by customers and  
7 members of the general public who enter the licensee's place of  
8 business.

9 Section 10. [NEW MATERIAL] SURETY BONDS.--

10 A. A licensee who originates mortgage loans only  
11 from a location within the state shall post and maintain with  
12 the director a corporate surety bond in the amount of twenty  
13 thousand dollars (\$20,000). A licensee who originates mortgage  
14 loans from a location outside the state shall post and maintain  
15 with the director a corporate surety bond in the amount of  
16 fifty thousand dollars (\$50,000). Every bond shall provide for  
17 suit thereon by any person who has a cause of action under the  
18 Mortgage Loan Originator Licensing Act. In no event shall the  
19 total liability of the surety to all persons, cumulative or  
20 otherwise, exceed the amount specified in the bond. Every bond  
21 shall provide that no suit shall be maintained to enforce any  
22 liability on the bond unless brought within three years after  
23 the act upon which it is based.

24 B. Bonds shall be in substantially the form as the  
25 director prescribes.

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1           Section 11. [NEW MATERIAL] DUTIES OF THE DIRECTOR.--In  
 2 addition to the powers of the director as set forth in Section  
 3 8 of the Mortgage Loan Originator Licensing Act, the director  
 4 shall:

5           A. promulgate rules necessary to carry out the  
 6 intent and purpose of the Mortgage Loan Originator Licensing  
 7 Act;

8           B. order a licensee to cease any activity or  
 9 practice that the director deems to be deceptive, dishonest,  
 10 violative of state or federal law or unduly harmful to the  
 11 interests of the public;

12           C. exchange any information regarding the  
 13 administration of the Mortgage Loan Originator Licensing Act  
 14 with an agency of the United States or an agency of any state  
 15 that regulates the licensee or administers statutes, rules or  
 16 programs related to mortgage loans;

17           D. disclose that an applicant's or licensee's  
 18 application or license has been denied, suspended, revoked or  
 19 refused renewal;

20           E. require or permit a person to file a written  
 21 statement, under oath or otherwise as the director may direct,  
 22 setting forth all the facts and circumstances concerning any  
 23 apparent violation of the Mortgage Loan Originator Licensing  
 24 Act or any rule promulgated pursuant to that act; and

25           F. follow the procedures set forth in the Uniform

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1 Licensing Act in carrying out the director's duties pursuant to  
2 the Mortgage Loan Originator Licensing Act.

3 Section 12. [NEW MATERIAL] DUTIES OF LICENSEES--UNFAIR  
4 PRACTICE.--

5 A. A licensee shall:

6 (1) conduct the licensee's business with  
7 reasonable skill, care and diligence;

8 (2) act in good faith and engage in fair  
9 dealing in any transaction, practice or course of business  
10 regarding mortgage loans; and

11 (3) comply with the provisions of the federal  
12 Real Estate Settlement Procedure Act of 1974 and the federal  
13 Truth in Lending Act.

14 B. A licensee shall not:

15 (1) originate a mortgage loan that would  
16 violate the provisions of the Home Loan Protection Act;

17 (2) coerce, extort, induce, bribe or  
18 intimidate an appraiser to value property in excess of its fair  
19 market value;

20 (3) misrepresent or conceal facts;

21 (4) make false promises;

22 (5) make false advertisements; or

23 (6) receive or accept payment of any  
24 commission, fee or other compensation for a mortgage loan, the  
25 payment or receipt of which would be in violation of state or

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1 federal law.

2 C. A violation of Subsection A or B of this section  
3 shall constitute an unfair trade practice pursuant to the  
4 Unfair Practices Act.

5 Section 13. [NEW MATERIAL] CEASE AND DESIST ORDER--CIVIL  
6 FINES.--

7 A. If the director determines after notice and  
8 opportunity for a hearing that a person has engaged, is  
9 engaging or is about to engage in any act or practice  
10 constituting a violation of any provision of the Mortgage Loan  
11 Originator Licensing Act or any rule pursuant to that act, the  
12 director by order may require any or all of the following:

13 (1) that the person cease and desist from the  
14 unlawful act or practice;

15 (2) that the person pay a fine not to exceed  
16 five thousand dollars (\$5,000) per incident for the unlawful  
17 act or practice; and

18 (3) that the person take such affirmative  
19 action as in the judgment of the director will carry out the  
20 purposes of the Mortgage Loan Originator Licensing Act.

21 B. Whenever it appears to the director that a  
22 person has engaged, is engaging or is about to engage in any  
23 act or practice constituting a violation of a provision of the  
24 Mortgage Loan Originator Licensing Act or any rule pursuant to  
25 that act, the director may bring an action in any court of

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1 competent jurisdiction to enjoin the acts or practices and to  
2 require compliance with that act or any rule pursuant to that  
3 act. Upon a proper showing, a permanent or temporary  
4 injunction, restraining order, restitution, writ of mandamus or  
5 other equitable relief shall be granted and a receiver or  
6 conservator may be appointed for the defendant or the  
7 defendant's assets.

8 Section 14. [NEW MATERIAL] MORTGAGE LOAN ORIGINATOR  
9 FEES.--At the time of filing any application, an applicant,  
10 licensee or registrant shall pay to the division the following  
11 nonrefundable fees as may be applicable:

12	Application for licensing as mortgage loan	
13	originator . . . . .	\$200
14	Renewal application for licensing as mortgage loan	
15	originator . . . . .	\$250
16	Amendment of any license . . . . .	\$50.00.

17 Section 15. [NEW MATERIAL] LOAN ORIGINATOR FUND--CREATED--  
18 APPROPRIATION.--

19 A. The "loan originator fund" is created as a  
20 nonreverting fund in the state treasury and shall be  
21 administered by the division. The fund shall consist of  
22 licensing or renewal fees received pursuant to Section 14 of  
23 the Mortgage Loan Originator Licensing Act and money that is  
24 appropriated or donated or that otherwise accrues to the fund.  
25 Money in the fund shall be invested by the state investment

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1 officer in the manner that land grant permanent funds are  
 2 invested pursuant to Chapter 6, Article 8 NMSA 1978. Income  
 3 from investment of the fund shall be credited to the fund.

4 B. Money in the loan originator fund is  
 5 appropriated to the division to carry out the provisions of the  
 6 Mortgage Loan Originator Licensing Act. Money shall be  
 7 disbursed from the loan originator fund only on warrant of the  
 8 secretary of finance and administration upon vouchers signed by  
 9 the director or the director's authorized representative. Any  
 10 unexpended or unencumbered balance remaining at the end of a  
 11 fiscal year shall not revert to the general fund.

12 Section 16. [NEW MATERIAL] CONTINUING PROFESSIONAL  
 13 EDUCATION--REQUIREMENTS--WAIVER.--A licensee shall every two  
 14 years complete at least twelve hours of approved continuing  
 15 professional education as a condition of licensing renewal as  
 16 follows:

17 A. each continuing professional education course  
 18 shall first be approved by the director;

19 B. continuing professional education courses shall  
 20 focus on issues of mortgage business or related industry  
 21 topics;

22 C. evidence of satisfactory completion of approved  
 23 continuing professional education courses shall be submitted on  
 24 forms provided by the director. The form may be submitted by  
 25 the licensee seeking continuing professional education credit

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1 or the person sponsoring the continuing professional education  
2 course. A licensee shall be ultimately responsible for  
3 ensuring that continuing professional education credit has been  
4 properly submitted to the director and shall maintain  
5 verification records in the form of completion certificates or  
6 other documents supporting evidence of attendance at approved  
7 continuing professional education courses;

8 D. the continuing professional education  
9 requirement shall run concurrently with the licensee's renewal  
10 year;

11 E. continuing professional education hours shall  
12 not be carried forward from one renewal period to the next  
13 renewal period;

14 F. a licensee who fails to renew a license pursuant  
15 to the provisions of the Mortgage Loan Originator Licensing Act  
16 shall obtain all delinquent continuing professional education  
17 hours before receiving a new license, unless a period of twelve  
18 months has elapsed from the expiration date of the license. In  
19 that case, the licensee shall pay a late fee, complete a  
20 minimum of twelve hours of continuing education and pass the  
21 required examination as established by the director;

22 G. renewal notices shall be mailed to the last  
23 known address on file with the director. It is the  
24 responsibility of the licensee to keep the director informed of  
25 changes in the licensee's address and phone numbers. Failure

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1 to receive a renewal notice shall not relieve a licensee of the  
2 responsibility of renewing a license before the expiration  
3 date;

4 H. a license that is not renewed on or before the  
5 expiration date of the license shall be considered expired and  
6 no longer valid;

7 I. a license shall expire and no longer be valid if  
8 the licensee fails to meet the continuing education requirement  
9 for renewal before the license expiration deadline;

10 J. a person engaged in mortgage loan origination  
11 whose license has expired is prohibited from mortgage loan  
12 origination until the expired license has been renewed;

13 K. the requirement for completion of continuing  
14 professional education may be waived or the deadline for  
15 completion may be extended by the director if the licensee is  
16 called to active duty in the armed forces of the United States  
17 for a period exceeding one hundred twenty consecutive days in  
18 any continuing professional education year; and

19 L. proprietary and alternate professional credit  
20 hours and curricula may be approved by the director in lieu of  
21 the initial and continuing professional education hours  
22 required pursuant to the Mortgage Loan Originator Licensing  
23 Act.

24 Section 17. A new section of the Mortgage Loan Company  
25 and Loan Broker Act is enacted to read:

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